

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

| | | |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | Cause No. CR 11-8-M-DWM |
| |) | |
| Plaintiff, |) | |
| |) | |
| -vs- |) | |
| |) | |
| WILLIAM RICHARD NIELSEN, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Taken at 201 East Broadway
Missoula, Montana
Friday, November 16, 2012 - 10:00 a.m.

Transcript of Proceedings heard before the
Honorable Donald W. Molloy

Reported by Jennifer Wells, Jeffries Court Reporting, Inc., 1015
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A P P E A R A N C E S

Cyndee Peterson, Assistant U.S. Attorney, Assistant U.S.
Attorney's Office, 105 E. Pine, Second Floor, Missoula, Montana
59802,

appearing on behalf of the Plaintiff.

Michael Donahoe, Senior Litigator, Federal Defenders of Montana,
104 Second Street South, P.O. Box 3547, Great Falls, Montana
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appearing on behalf of the Defendant.

1 Friday, November 16, 2012

2 THE COURT: Be seated, please. Would you call the next
3 matter on the calendar.

4 THE CLERK: This is the time set for resentencing in
5 CR 11-8-M-DWM, the United States of America versus William
6 Richard Nielson.

7 THE COURT: Good morning, Ms. Peterson.

8 MS. PETERSON: Good morning, Your Honor.

9 THE COURT: Have you read the updated amended presentence
10 investigation report that was prepared following the Ninth
11 Circuit's decision of September 12th of this year?

12 MS. PETERSON: Yes, Your Honor.

13 THE COURT: Do you have any objections to the presentence
14 investigation report?

15 MS. PETERSON: No, sir.

16 THE COURT: Are you going to make a motion on the 3E1.1(b)
17 for the acceptance of responsibility?

18 MS. PETERSON: Yes, Your Honor.

19 THE COURT: That motion is granted. Any other motions
20 you're anticipating?

21 MS. PETERSON: No, Your Honor.

22 THE COURT: I do believe that I sent out notice indicating
23 I contemplated making an upward variation.

24 MS. PETERSON: I do, Your Honor.

25 THE COURT: Do you need any more time to deal with that?

1 MS. PETERSON: No.

2 THE COURT: Good morning, Mr. Donahoe.

3 MR. DONAHOE: Good morning, Your Honor.

4 THE COURT: Have you read the presentence investigation
5 report as it relates to William Richard Nielsen?

6 MR. DONAHOE: Yes.

7 THE COURT: Has William Richard Nielsen read the new
8 presentence investigation report?

9 MR. DONAHOE: I have gone over and explained the changes to
10 him, yes.

11 THE COURT: So have you gone over it in detail with him?

12 MR. DONAHOE: Yes.

13 THE COURT: Do you have any objections to the presentence
14 investigation report?

15 MR. DONAHOE: No, except for the comment about the sex
16 offender treatment program and his willingness.

17 THE COURT: Right. And that comment is set forth in
18 paragraph 9.

19 MR. DONAHOE: 9 I think, yes.

20 THE COURT: Right. And it doesn't have anything to do with
21 any sentence that I would impose. I think it's information.
22 Ironically, I think the guideline books that just came out
23 indicate that the commission has made a change that
24 post-sentencing conduct can be considered in -- when there's a
25 resentencing, but I don't think that applies here. And in any

1 event, I'm not taking that into account in terms of what I think
2 is a reasonable sentence in the case. So I have given notice I
3 am contemplating an upward variation. Do you and Mr. Nielsen
4 need any more time to prepare to deal with that issue?

5 MR. DONAHOE: No.

6 THE COURT: Do you have any objections -- I think I asked
7 you that, but other than do you have objections that I need to
8 rule on?

9 MR. DONAHOE: No, Your Honor, I don't.

10 THE COURT: All right. Well, for purposes of the record,
11 then, I'm going to accept the presentence investigation report
12 as amended after the Ninth Circuit's decision, which faulted my
13 reasoning in the application of the vulnerable victim to a
14 12-year-old girl that was enticed by Mr. Nielsen to come up here
15 where he repeatedly raped her, that she wasn't vulnerable. And
16 I am uncertain if that opinion says the guideline can never be
17 applied or if it says my reasoning wasn't good enough. I will
18 accept the latter.

19 And then I was faulted also for including in his criminal
20 history his prior sex offense when he was 15 or 16 years old in
21 Pend Oreille -- or Pondera County. And that was a conviction
22 that he was required to be a registered sex offender for. And
23 the Circuit reasoned that you can't count juvenile convictions,
24 apparently, for calculating his -- for the application of the
25 criminal history. And so for those two reasons they reversed

1 it. I think there was a challenge as to the reasonableness of
2 the sentence, which was left unanswered.

3 So I am accepting the plea agreement and I have given
4 notice that I am -- and I will make an upward variance in this
5 case for the reasons I will state. And as we all know, the
6 things that we say orally we think are perfectly logical until
7 you read a transcript, and there are always things that are not
8 what you planned to say and there are always instances that
9 there are things that you wish you had said in order to make a
10 more complete record. And to alleviate that from being an issue
11 in the fact that I have given notice, I will orally pronounce
12 the sentencing and my reasoning, but I fully intend to do, for
13 want of a better term, findings of fact in an effort to fully
14 flesh out what my reasoning is in making an upward variation in
15 this case. And so I will try and be as clear as possible this
16 morning. But I am also going to be providing a written
17 justification for the sentence.

18 So if there are no legal issues to rule on, Mr. Donahoe, I
19 will give you an opportunity to speak on behalf of Mr. Nielsen.
20 He can join you. I will give him an opportunity to speak before
21 calling on Ms. Peterson.

22 MR. DONAHOE: Thank you, Your Honor. I really don't have a
23 lot this morning. I guess through the appeal process I did stay
24 in touch with Mr. Nielsen and sort of kept track of his
25 whereabouts. He did land in Tucson in the facility there and we

1 stayed in pretty close contact on the telephone. I think he has
2 made progress at the institution. And as the amended reports
3 notes, he's not really suffered any discipline problems. He has
4 a job in the kitchen. In the way of a physical issue, he broke
5 his glasses a little bit ago and was unable to replace the lens.
6 So he has a hard time seeing, actually, and has to read up close
7 and is suffering from headaches. I don't think that that has
8 anything to do with what we're doing this morning. I just
9 wanted to make an observation that he seems to be suffering
10 under that condition.

11 Your Honor, I would please urge the Court to give a
12 guideline sentence in this case. I respectfully submit that
13 it's somewhere in that range. I might even concede the top end
14 of it would be sufficient, but not greater than necessary. And
15 I say for a couple of reasons. First, as indicated, I have kept
16 in touch with Mr. Nielsen. I think he's doing his best to adapt
17 to an incarceration setting.

18 He does, in fact, intend to engage in the sex offender
19 treatment program. He will do that both in the institution at
20 an appropriate time. He's just too far in the beginning of his
21 sentence to matriculate into the system now. He has completed
22 the drug program. He has done that, has that under his belt.
23 And I think he's making a good effort to do this time. And in
24 speaking with him, I think the incarceration is starting to have
25 an effect. He has incentive for release. He looks to the day

1 when he can get back into society. And I think he's going to
2 take full advantage of the programs available to him. So
3 hopefully to make him a law abiding and better citizen when he
4 is released.

5 He's a young man. I think he has some potential. I know
6 his background is difficult and in some ways works against him
7 for reasons that maybe are his own fault. But I believe that
8 there is redemption for anybody that tries hard enough. And I
9 think he's starting to display the willingness to do that. I
10 hope the best for him, and I have told him that. And I have
11 tried to orient him in a positive way. And I guess, in
12 conclusion I just want Your Honor to know I think he's starting
13 to respond to that. He's keeping to himself at the institution.
14 He likes the fact that he has a job. He was working in the
15 kitchen at Tucson. So I think he's adapting and his promise for
16 the future would please warrant a sentence within the guideline
17 range.

18 Thank you.

19 THE COURT: Thank you, Mr. Donahoe.

20 William Richard Nielsen, you have a right to speak on your
21 own behalf before I impose sentence on you. Would you like to
22 exercise that right?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You may proceed.

25 THE DEFENDANT: All I can say is I know I screwed up. I am

1 extremely sorry for what I have done, and I plan on working the
2 best I can to make myself better while I'm incarcerated.

3 THE COURT: Anything else?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. You and Mr. Donahoe may be seated.
6 Ms. Petersen.

7 MS. PETERSON: Thank you, Your Honor. The Court had
8 previously found that the guideline range at the prior
9 sentencing, which is 235 to 293 months, was insufficient and
10 varied up 480 months in this case. And government would argue,
11 Your Honor, how much more so is 188 to 235 insufficient based on
12 all of the prior reasons that the government set forth. And we
13 would incorporate those comments that were made at the prior
14 sentencing. And all of the reasons previously cited by the
15 Court, 480 months is the sentence that is sufficient, but not
16 greater than necessary in this case. I don't want to go back
17 through and reiterate everything, Your Honor, because I know
18 that you're familiar with the record. It's difficult because
19 obviously when we're at this stage now it's easier to minimize
20 the effect on the victim and the heinous nature of the crime.
21 And I don't want the Court to do that, and frankly, I don't
22 think the Court will. But I would specifically ask that the
23 Court would incorporate all of the prior reasons, all of the
24 issues that were relayed in the evaluations, including the
25 reasons that were made to the defendant's history and conduct,

1 the impact on the victim and to impose the same sentence that
2 was previously imposed.

3 The one thing that I would ask the Court to do, Your Honor,
4 is address -- I believe there were three things that were
5 brought up in the appeal when the defendant challenged the
6 sentence as being unreasonable. There are issues that were
7 pointed out that can now be corrected. And in case there is
8 another appeal, I would like the record to be clear on those
9 three things. One of them that was challenged was that the
10 Court -- the defendant was talking about how the Court's reasons
11 were repetitious and exaggerated. And he had stated -- the
12 Court stated that the Scolatti report characterized appellant as
13 a, quote, high-risk to re-offend. But the report actually
14 states that the risk to re-offend is moderate high.

15 I believe that what the Court was talking about is that
16 based on the violence recidivism scale, Mr. Nielsen falls in the
17 highest third for offenders on violent crime. But the risk
18 designation on the special recidivism rate is moderate to high.
19 So I would ask that the Court clarify that it was referencing
20 the violent sex and the violent recidivism rates when you were
21 referencing that he falls into the upper third.

22 The second challenge was from the quote -- was from the
23 Court's quote saying that it is also coming from Dr. Scolatti's
24 report. The Court's statement was, It's highly unlikely that
25 Mr. Nielsen is likely to learn from his experience. And the

1 defendant challenged that nothing in Dr. Scolatti's report said
2 that.

3 Dr. Scolatti's report says, and I quote, He is not likely
4 to learn from experience. So in the event that there's any
5 difference between the Court saying that it's highly unlikely
6 and he is not likely to learn from experience, I would ask that
7 the Court make that clear.

8 And the third one is that the Court stated erroneously,
9 again, because I think the Court was approximating, but the
10 Court made the statement that the defendant was 15 years older
11 than the victim. And actually, the defendant is 11 and a half
12 years, approximately, older than the victim.

13 So the government would ask the Court to clarify those
14 specific things on the record, impose the same sentence relying
15 on all of the reasons that were previously stated.

16 Thank you, Your Honor.

17 THE COURT: All right. Thank you. Well, one thing I
18 hadn't done was to go over the statutory and guideline
19 provisions prior to allocation, but I don't think it
20 procedurally makes a difference.

21 And if you think it does, Mr. Donahoe, I will give you
22 another bit at the apple.

23 MR. DONAHOE: No. I'm fine.

24 THE COURT: All right. The statutory provisions are that
25 Mr. Nielsen can be incarcerated for no less than 10 years. The

1 maximum sentence is life imprisonment. Under the revised
2 presentence investigation report that was prepared after the
3 Ninth Circuit's opinion in reversing the case is now 188 months
4 to 235 months.

5 With respect to probation, by statute Mr. Nielsen cannot
6 receive probation. The guidelines advisory and character
7 indicate probation is not available.

8 Supervised released for Mr. Nielsen by statute can be no
9 less than five years. It can be up to life. The guideline,
10 advisory in nature, recommend five years to life in prison.

11 And by statute he could be fined up to 250,000. The
12 guideline range is 20,000 to 200,000.

13 By statute restitution is available. And I believe that
14 Mr. Donahoe in his pleadings indicated that he did not have any
15 difficulty with the concept of restitution, as long as there was
16 justification. It's my understanding that the restitution is
17 \$2,305, which is the amount of travel and counseling for the
18 mother and father of the victim. And that the guidelines, if
19 statute authorizes the \$2,305, so do the guidelines.

20 He has to pay a \$100 special assessment by statute and
21 under the guidelines.

22 It will cost roughly \$29,000 for each year that Mr. Nielsen
23 is incarcerated, with an additional 3500 for each year of his
24 supervised release. If he were sentenced within the advisory
25 guideline range of 188 to 235 months, it would cost the American

1 tax payers between \$452,700 and \$566,000. Those are rough
2 numbers.

3 Supervised released would at least be \$17,166, and it's
4 going to be for life. So it's roughly \$3500 for each year
5 Mr. Nielsen lives after he gets out of prison.

6 So I had not done that earlier when I usually do, but,
7 Ms. Peterson, is that an accurate statement of the statutory
8 guidelines and provisions? And if you would, address the
9 restitution.

10 MS. PETERSON: Yes, Your Honor, I will. That is an
11 accurate statement and the government has no objections to it.
12 The restitution is not for any counseling or therapy. That has
13 been withdrawn from the victim's request. The restitution is
14 specifically \$1705 for the father, and \$600 for the mother. And
15 that was for their expenses in coming up to rescue their
16 daughter.

17 THE COURT: The 600, was that for her counseling or was
18 that for --

19 MS. PETERSON: No. Those were for the mother's expenses
20 that were incurred coming up to Montana.

21 THE COURT: All right. Mr. Donahoe, as far as the
22 restitution is there an issue?

23 MR. DONAHOE: No, Your Honor. I had notice of that
24 yesterday, that number. And we have no objection to that.

25 THE COURT: All right. Thank you.

1 Well, I think that the request of the United States that I
2 clarify the issue of Dr. Scolatti's moderate to high and the
3 violence category versus the sexual recidivism and his
4 determination, as well as my characterization of what he said
5 concerning whether or not the defendant was unlikely to learn,
6 as opposed to my reference and the age distinction between
7 Mr. Nielsen and a 12 year old is a reflection of what I said at
8 the beginning of this. When imposing a sentence when I spend
9 the evening and the day before reading presentence investigation
10 reports and reflecting on it, and in this case, of course,
11 having a great deal of time after the Ninth Circuit opinion to
12 reflect on the sentence that is sufficient, but not greater than
13 necessary, and then reflecting on what I said, what I intended
14 to say, and what I should have said, points out why I think it's
15 important that I write out specifically what my reasoning is in
16 this case. Because sometimes, even though I attempt to engage
17 my brain before my tongue, oftentimes it doesn't come out at
18 least the way I think I was going to say it.

19 Ms. Peterson is absolutely correct in her characterization
20 of the three issues that she has raised. And I will make sure
21 in my written justification for the sentence that I'm going to
22 impose that that is clearly reflected. With that in mind, I am
23 going to sentence William Richard Nielsen to 480 months. I do
24 not believe a sentence within 188 to 235 months is sufficient
25 given all of the information that is available concerning

1 William Richard Nielsen, the nature and circumstances of the
2 offense and the history and characteristics of William Richard
3 Nielsen.

4 In this case, Mr. Nielsen met a 12-year-old girl through a
5 phone service called Lavalife, L-A-V-A-L-I-F-E. In the
6 conversations, however the victim got on that website, whatever
7 representations she may have made, in the course of her initial
8 contact and sexting with Mr. Nielsen, he was made aware that she
9 was 12 years old. Despite knowing that she was 12 years old and
10 having told her he was a convicted sex offender, he proceeded --
11 they proceeded to engage in phone sex. Mr. Nielsen then
12 encouraged the victim, who was 12 years old, to come to Montana
13 with representations that they would -- he would provide her
14 drugs and a good time. He promised her marijuana and he
15 promised her a good time. He told her what, I think, roughly
16 the cost of \$110 to get a bus ticket and encouraged her to do
17 that. She had \$50 from her father, stole \$50 from her mother,
18 bought a bus ticket and used Mr. Nielsen's last name, came to
19 Missoula on January 5th of 2011.

20 Mr. Nielsen, a convicted sex offender, met her at the bus
21 station and then took her to his apartment, which was not that
22 far away, immediately began smoking marijuana and then engaged
23 in sex with her.

24 Over the next four days Mr. Nielsen admitted having sex
25 with a 12-year-old girl several times a day. He admitted to

1 slapping her -- this is a quote -- tits, breasts, ass, and
2 vagina, end quote. He also admitted to biting her, quote, ass,
3 tits and neck, end quote. Mr. Nielsen referred to this
4 12-year-old girl as his, quote, little fuck pet, end quote. And
5 either asked or insisted that she call him, quote, daddy, end
6 quote.

7 In the repeated rapes of this child, Mr. Nielsen did not
8 use any sort of condom until she began bleeding. There is a
9 suggestion by Mr. Nielsen she was bleeding because of her
10 period. There is contrary evidence to indicate she was bleeding
11 because of the violence and repeated sex she had been exposed to
12 with Mr. Nielsen.

13 In interviews with police officers Mr. Nielsen was asked
14 what his plan was with this child. And he told the interviewing
15 officers that in all likelihood his conduct would have continued
16 until she was 18 years old.

17 It is reflected in the presentence report the statement of
18 the victim's mother, the horror of her finding her daughter
19 naked in his bed, having repeatedly been raped, and encountering
20 a door that had locks on both sides of the door, so that
21 Mr. Nielsen had the capacity to lock her in when he was out of
22 the place and to keep her in when he was in the place.

23 The sex that he engaged in involved sexual intercourse,
24 oral sex, and digital manipulation of various orifices on that
25 child's body.

1 Mr. Nielsen at the time, I believe, was 24 years old. At
2 the time he was supposedly 6 foot 4 or 6 foot 3, and weighed
3 roughly 370 pounds.

4 When confronted initially after the parents arrived and
5 found their daughter, Mr. Nielsen lied, stating that somebody
6 named Bill had dropped her off at his apartment and asked her
7 to -- asked him to watch the child for a couple of days. He
8 insisted that the child advised him she was 18 years old. And
9 then subsequently in his interrogation admitted the reality of
10 what had occurred.

11 When the parents came frantically looking for their child
12 and found him through efforts -- concerted efforts on behalf of
13 the family and with the help of friends, they found her in
14 Nielsen's apartment laying naked on his bed. According to her,
15 he had drugged her to the point that she had, quote, You drugged
16 me up to the point I had no control over myself.

17 She was taken to St. Patrick's Hospital in Missoula,
18 Montana, and had abrasions on her back, pain in her head, pain
19 in her lower back, and her wrists were bruised and tender.

20 Mr. Nielsen, in the course of being interviewed, refers to
21 himself as a, quote, light sadist, end quote. And quote, a bit
22 of a masochist, end quote. He admitted he had not used any kind
23 of condom until she began bleeding, but as I have earlier
24 indicated, he acknowledged that having sex with her repeatedly
25 over the period that she was kept in his apartment may have been

1 the reason for the trauma to her vagina and the bleeding which
2 occurred.

3 With respect to the light sadist and bit of a masochist, as
4 well as with respect to Mr. Nielsen's background, when you look
5 at his criminal history, not for purposes of scoring, but for
6 purposes of trying to ascertain his background and who he is,
7 his violence begins when he was 12 years old. When he was 13,
8 he was involved in more violence, involving the police who were
9 called to a school because of an altercation with another
10 student. And at that time, when he was 13 years old, he was
11 still extraordinarily big for his age.

12 But when he was 15, he sexually assaulted his half-sister.
13 And what he did was -- she advised a counselor that he had raped
14 her, not by virtue of inserting his penis in her vagina, but by
15 engaging in oral and digital sex. She advised that this
16 occurred because somehow Mr. Nielsen had discovered that his
17 stepsister had been physically either abused or engaged in sex
18 with somebody that was a friend of her mother. And Mr. Nielsen
19 threatened her that he would he expose her past if she did not
20 engage in some sort of sexual behavior with him. And what
21 occurred is that Mr. Nielsen convinced her to go into his
22 bedroom where she lay on the bed, and then Mr. Nielsen proceeded
23 to sexually assault her by touching her in her genital and
24 vaginal area with his fingers, then removing her undergarments
25 and engaging in oral sex with his half-sister. This was brought

1 to the attention of the mother who indicated to him that he
2 would be sent away if he did not alter his ways. When he ended
3 up being sent away for that behavior, then he was released at
4 the age 18 and did not register as a sex offender. And had a
5 conviction where he got a suspended sentence of five years for
6 failing to register as a sex offender.

7 But the record indicates that Mr. Nielsen was not finished
8 with his aberrant -- or deviant would be a better word, sexual
9 behavior. When he was 24 years old, in July of 2010, which was
10 roughly six months before this incident, there was an issue
11 concerning two women going to his residence. And it is in the
12 record that Mr. Nielsen tried to convince one of the two women
13 or perhaps both of them to engage in what was referred to as a
14 threesome. And that an incident occurred where Mr. Nielsen,
15 while one of the woman was showering, sexually assaulted the
16 other woman by, according to the woman, squeezing her boobs and
17 grabbing her vagina. He stopped at some point.

18 And then the other woman indicated that Mr. Nielsen had
19 suggested that they have a threesome. She had met Mr. Nielsen
20 online, as the child in this case did. And she had an intimate
21 relationship with Mr. Nielsen. And that relationship, whether
22 she persisted in her view or altered her view, her statements
23 were relatively consistent that she was sexually assaulted by
24 Mr. Nielsen on a number of times. When she was sleeping he
25 would abuse her or attempt to engage in sex against her wishes.

1 And that Mr. Nielsen had, according to her, a fantasy of wanting
2 to play rape. He would pin her down and then engage in sexual
3 intercourse. And according to this woman, she was forced to be
4 a sex slave. And indeed, the record reflects that she signed a
5 contract prepared by Mr. Nielsen that he obtained from the
6 Internet indicating the terms of the sexual slavery agreement.

7 There is some dispute as to what actually occurred
8 concerning the effort at threesomes, but the woman who was
9 apparently the sex slave altered her view and basically went to
10 the police and indicated she deserved what happened and told the
11 police that she had signed a contract before moving in with
12 Mr. Nielsen where she was going to be a sex slave. She
13 indicated that she consented to the sexual relationship, but
14 that they had recently broken up and had a relationship of,
15 quote, friends with benefits, end quote.

16 She met Mr. Nielsen on Lavalife, and he was paying to have
17 phone sex. However, she moved to Missoula at the age of 18,
18 entered the slave contract with Mr. Nielsen. And in that
19 relationship he required her to refer to him as, quote, master.
20 And when in the master's presence she could not wear a bra, and
21 she had to ask Mr. Nielsen permission for anything and was
22 responsible for his sexual gratification. They discussed,
23 quote, safe words, end quote, that they would use during sexual
24 play. But that her report was that Mr. Nielsen had this play
25 rape fantasy that he wanted to act out. And her suggestion was

1 that the safe words were not responded to with the immediacy
2 that they had as an understanding.

3 Mr. Nielsen engaged, I think, in some significant violence
4 that was reported by another tenant in the same building, where
5 this slave woman was shoved and punched. And that it was
6 reported that Mr. Nielsen was observed running at the slave
7 woman and smashing her into the walls, and she was without
8 clothing, trying to push him away. And then later reported to
9 the woman who -- or reported to the woman that called the police
10 about this master-slave relationship that she had with
11 Mr. Nielsen. Other persons reportedly heard the woman saying,
12 Stop doing that.

13 There are a number of evaluations that have been done on
14 William Richard Nielsen by various psychologists that are
15 reflected in the presentence report. And I will refer to them
16 in the written materials that I provide as a justification for
17 the sentence. But when I read both the information in the
18 presentence report and the evaluations that have been provided
19 to me, particularly that of Dr. Scolatti, I think it is
20 important to say or quote what Dr. Scolatti had to say.

21 Mr. Nielsen approached the evaluation with a combination of
22 openness and wariness. He is no stranger to the criminal
23 justice system and his responses to the inquiries demonstrated
24 his knowledge and awareness. That is, he appeared to be very
25 candid and open with discussing material that would not get him

1 into trouble, information that was already known about him or
2 historical data which did not present him in a negative light.
3 However, he was much more reticent to divulge any information
4 that might be incriminating to his current case or past criminal
5 actions. For example, he denied his adolescent offense against
6 his sister and backpedaled on the current offense regarding
7 incriminating information he disclosed during his law
8 enforcement interview. Rarely did Mr. Nielsen take full
9 responsibility for any of his transgressions.

10 In assessing the possibility that Mr. Nielsen falsely
11 admitted elements of his offense to the detective working this
12 case, according to Dr. Scolatti and the information available to
13 him, there is no evidence to substantiate the assertion.

14 Dr. Scolatti noted that psychological testing indicated a
15 plethora of problems. While there is no doubt Mr. Nielsen has
16 psychological problems, his over-endorsement of pathological
17 items makes it difficult to sort the, quote, wheat from the
18 chaff, end quote. Suffice it to say, the MMPI-2RF was
19 technically invalid due to his pathological response style.
20 Other personality instruments also reflected his expressed
21 emotional distress and were not rendered invalid.

22 Dr. Scolatti, of course, in a very lengthy report went on
23 to state Mr. Nielsen has a significant antisocial personality
24 disorder, with prominent borderline and schizoid features. The
25 essential maladaptive personality features are a pension for

1 stimulus variety and excitement, and an inability to tolerate
2 boredom and routine. This prompts him to be impulsive,
3 irresponsible, negativistic and unpredictable. Central to his
4 personality disorder is Mr. Nielsen's risk taking and
5 impulsiveness behaviors. Risk taking is often carried out for
6 itself for the excitement it provides for the sense of feeling
7 alive and engaged in life, rather than for purposes such as
8 material gain or status in a peer group. Mr. Nielsen responds
9 before thinking, acting impulsively and behaving in an
10 unreflective, uncontrolled manner.

11 Beyond his inability to control his behaviors and feelings,
12 Mr. Nielsen appears to be substantially fearless, undaunted by
13 events that most people experience as dangerous and frightening.
14 And he gives evidence of venturesomeness that appears blind to
15 the potential serious consequences. His risky behavior is
16 foolhardy, not courageous.

17 When Mr. Nielsen was earlier evaluated in 2002 by Barbara
18 Bottomly, she found, based on testing results from the MMPI,
19 that Mr. Nielsen had serious impulse control problems. He had
20 low frustration tolerance, and the need for constant stimulation
21 caused him to behave recklessly and irresponsibly, that he was
22 uninhibited and self-indulgent. He had an exaggerated sense of
23 self that bordered on grandiosity. And that two significant
24 factors, a natural ability to charm, persuade or even con
25 others, and he had numerous misanthropic attitudes.

1 And her finding was that his characteristics, as evidenced
2 by the MMPI reflected a person not -- that is a poor candidate
3 for traditional psychotherapy. When she administered the
4 Buss-Durkee test in 2002, which is a measure of hostility, there
5 were several categories. Mr. Nielsen, at that time, had an
6 overall score of 45. And the cutoff for that particular
7 evaluation is 38. The characteristics under resentment, the
8 high score for the test is four, the defendant's score was 5.
9 Under indirect hostility the high score was 6, and the
10 defendant's score was 8. Under the category of assault the high
11 score is 6, and the defendant's score was 8. Under suspicion
12 the high score is 4, and the defendant's score was 7. Under
13 verbal hostility the high score was 9, and the defendant's score
14 was 9.

15 She found there were other issues with Mr. Nielsen, which
16 were consistent with the later findings, in my opinion, of Dr.
17 Scolatti, which are very troublesome. And that is
18 Mr. Nielsen's -- she characterized them as critical items that
19 should be followed up on -- his desire to get hurt and his
20 desire to get in fights. And she apparently felt that he
21 suffered from many behavioral problems, that testing revealed --
22 suggested aggression verbally and physically, as well as
23 indirect hostility.

24 In that evaluation by Ms. Bottomly there were also
25 instances of Mr. Nielsen's incapacity to abide by the truth,

1 even when confronted, and his propensity to prevarication by
2 changing his view or representations of what had occurred in his
3 sexual misbehavior. In the incident that she was describing
4 Mr. Nielsen made excuses and said that his sexual offense
5 happened because the person, I.E., his sister -- stepsister --
6 or half-sister, excuse me, was so curious and interested in sex.
7 And then, of course, attributed his sexual deviation to his
8 family.

9 There are many other aspects of Dr. Scolatti's report where
10 he says in one part that sexually two diagnostic classifications
11 pertain to Mr. Nielsen, sexual sadism and paraphilia.

12 Paraphilia focused on sexual sadism involves acts -- real, not
13 simulated -- in which the individual derives sexual excitement
14 from the psychological or physical suffering, including
15 humiliation of the victim, which is entirely consistent with the
16 sex slave that he contracted with and with his abuse of the
17 child victim in this case.

18 Some individuals with this paraphilia are bothered by their
19 sadistic fantasies, which may be invoked during sexual activity,
20 but not otherwise acted on. In such cases the sadistic
21 fantasies usually involve having complete control over the
22 victim who is terrified by anticipation of the impending
23 sadistic. Others act on sadistic sexual urges with a consenting
24 partner, parenthetically, who may have sexual masochism, who
25 willingly suffers pain or humiliation. Sadistic fantasies or

1 acts may involve activities that indicate the dominance of the
2 person over the victim. In other words, forcing the victim to
3 crawl or keeping the victim in a cage. It may also involve
4 restraint, blindfolding, paddling, spanking, whipping, pinching,
5 biting -- excuse me, beating, burning, electrical shocks, rape,
6 cutting, stabbing, strangulation, torture, mutilation or
7 killing.

8 Mr. Nielsen's sexual behavior with the victim in this case,
9 as well as his self-reported interest in sadomasochist
10 activities has been present for over a period of at least six
11 months. During this time he has engaged in recurrent, intense
12 sexually arousing fantasies, sexual urges and behavior involving
13 acts in which the psychological or physical suffering, including
14 humiliation, of the victim was sexually exciting to him. He has
15 acted on these sexual urges with a nonconsenting person. And
16 the sexual urges and fantasies have caused marked distress and
17 interpersonal difficulty for him.

18 In addition, Mr. Nielsen has a paraphilia not otherwise
19 specified, involving hebephilia. Hebephilia is not a separate
20 diagnostic, but rather it is a subcategory which is
21 characterized by persistent sexual interest or sexual activity
22 with young 13- to 16-year-old adolescents, and the adult person
23 is more than five years older than the teenager. In his
24 interview with police Dr. Scolatti reports Mr. Nielsen
25 acknowledged sexual contact with three 15-year-old girls since

1 he has been 18 or older than 18.

2 As is pointed out by Ms. Petersen, Mr. Nielsen, according
3 to Dr. Scolatti, is a moderate to high risk to re-offend. And
4 Dr. Scolatti says, From my examinations of Mr. Nielsen I did not
5 find many redeeming qualities and a poor potential for sustained
6 rehabilitation. Given his significant antisocial psychopathic
7 traits, he is a poor candidate for treatment from a
8 rehabilitative perspective.

9 The consequences of this act, with respect to the child
10 that he raped repeatedly, is reflected in her indication that
11 she has now experienced constant flashbacks and fear from the
12 raping. And that she is suicidal, because that's the only way
13 she can escape flashbacks. Her mother, in a very poignant
14 victim's statement, talks about what it was like for her, the
15 mother of the 12 year old, to know that her child is gone and
16 not knowing whether the child was alive or dead, the nightmares
17 that reoccurred and continue to reoccur, the hopelessness and
18 frantic ability -- efforts, not ability, searching for her
19 daughter day and night; the toll that it took on them physically
20 in not knowing if their child was dead or alive; the effort to
21 contact police, missing and exploited children databases, bus
22 stations, organizations, family members; and then finally
23 tracking her down and coming to Missoula with the child's
24 father. And to quote her, It was devastating, even more
25 devastating was the fact that she was found with a 24 year old

1 prior sex offender, William Nielsen. I walked into William
2 Nielsen's apartment and I saw my 12 year old lying naked on his
3 bed as he cursed at her to get up, saying her name, to get up
4 and put -- this is a quote -- quote, her name, get up and put
5 some fucking clothes on, end quote. And as the mother stated,
6 that is a sight and experience that no parent should have to see
7 or want to see. She still has, in her words, I still go back in
8 my nightmares and see the lock that locked from both sides and
9 imagine my little girl trapped inside. She continues to have
10 flashbacks and reports that her daughter, this child, has
11 attempted suicide and struggles every day with the effects of
12 this crime -- the effect this crime has had on her.

13 And the child's father very poignantly said in response to
14 the impact on him, quote, We all lost our little girl, period,
15 my baby, end quote.

16 When I consider the nature and circumstances of the offense
17 and the history and characteristics of William Richard Nielsen,
18 as I have articulated here and will articulate in a written
19 finding, it is my opinion that based on his history and his
20 characteristics and the nature and circumstances of this
21 offense, that imposing a sentence within the guideline range of
22 188 to 235 months would be woefully inadequate and insufficient.
23 I believe based on that factor alone of 3553(a) that a sentence
24 of 480 months is sufficient to accomplish the goals of
25 sentencing as it relates to the first characteristic.

1 There is a need for the sentence imposed to reflect a
2 seriousness of the events and to promote a respect for the law
3 and to provide just punishment for the offense. Mr. Donahoe has
4 articulated in this instance Mr. Nielsen is beginning to get it,
5 that he has completed the drug program, which is kudo for him,
6 that incarceration is beginning to have an effect, that he still
7 is young. And Mr. Donahoe has articulated the concept that he
8 believes in redemption and that everybody has a prospect of
9 redemption if simply given the opportunity.

10 When I consider the argument of redemption and its
11 prospect, given his history, and I try and balance those against
12 the seriousness of the offense he is, in my view -- and I think
13 it is reflected in the records -- a predator. And if you look
14 at the instances of using this Lavalife, whatever that program
15 is, to entice a 12 year old to engage in this horrific rape and
16 sexual assaults. And I understand the Ninth Circuit's opinion,
17 that a 12-year-old girl, as I had previously articulated, is not
18 a vulnerable victim. I was perhaps inarticulate in my
19 expression of what the facts are. And my reasoning apparently
20 was faulty, and so I have not included that as any factor in
21 terms of calculating the guidelines. My experience is simply
22 that 12-year-old boys or girls are extraordinarily susceptible
23 and vulnerable to influence by those who are older than they
24 are.

25 And here Mr. Nielsen was indeed -- that he was 24 and she

1 was 12. Apparently that's an 11 and a half year difference
2 based on birth dates. And I had incorrectly stated he was 15
3 years older, which was perhaps loose language that didn't
4 express what I intended to say. Nonetheless, a 24-year-old man
5 and a 12-year-old girl, he is going to obviously be able to
6 influence her, as he did in this case, and entice her.

7 And using the Internet, which is readily available to
8 anybody who has cell phones and all of these digital things that
9 enable people from the highest generals in the land to the
10 children in the land, to engage in inappropriate sexual
11 behavior.

12 I can't, in my mind, fathom more offensive conduct with
13 children than what Mr. Nielsen engaged in here, unless it is
14 homicide. He repeatedly raped her. And it was all basically
15 for his gratification and sexual gratification and excitement.
16 And the language he used, the things that he admitted doing, the
17 biological and physiological references are offensive. And to
18 do it with a 12-year-old girl, I think it would be difficult for
19 me to overstate the seriousness of this offense.

20 To promote respect for the law. I think Mr. Nielsen has no
21 respect for the law. And I believe if a sentence was within the
22 advisory guideline range, he could tough it out and he would be
23 right back with little or no respect for the law, seeking
24 excitement when it was available to him, consistent with the
25 psychological reports that have been done by Dr. Scolatti and

1 Ms. Bottomly.

2 Just punishment for the offense. I don't know how one
3 measures justice in these kinds of circumstances. I do feel
4 that punishment is a factor that must be taken into account in
5 this case. I don't think that the punitive aspect of 235
6 months, which is almost 20 years, is adequate. I think that 480
7 months is not greater than necessary, but it is sufficient to
8 take into account the component of 3553(a), which calls on me to
9 consider the seriousness of the offense, the punishment of
10 Mr. Nielsen and promoting a respect for the law.

11 The sentence has to deter criminal conduct. This is a very
12 significant factor given all of what has been provided to me and
13 the knowledge that I have from the records of William Richard
14 Nielsen. The two components of deterrence are specific
15 deterrence and general deterrence. Specific deterrence is the
16 critical factor here. In my view, William Richard Nielsen needs
17 to be incapacitated, and for as long as possible, in order to
18 deter him from further criminal conduct. And I shouldn't say as
19 long as possible. That's another one of those where he should
20 be incapacitated for a significant period of time that isn't as
21 long as possible, because I'd be putting him in prison for life,
22 but is sufficient to incapacitate him based upon all of the
23 information in this presentence investigation report and the
24 psychological reports.

25 General deterrence, in my view, is not very effective in

1 these kinds of cases. Maybe it is, but I doubt it. There is a
2 need to protect the public from other crimes by William Richard
3 Nielsen. This is a very significant aspect of my view that an
4 upward variation is necessary, and that Mr. Nielsen, who is a
5 repeat sexual offender who was engaged in sexual behavior that
6 is certainly beyond the expectation of normal behavior between
7 consenting adults -- but given what adults do is one thing --
8 it's certainly, I think, and based on Dr. Scolatti's reference
9 concerning his finding that Mr. Nielsen is a moderate high risk
10 to offend without many redeeming qualities and a poor potential
11 for sustained rehabilitation, and the earlier findings of
12 Ms. Bottomly and the propensity reflected and the violence
13 characteristics that are reflected in the presentence report and
14 in psychological reports the public needs to be protected. I
15 think that Mr. Nielsen has demonstrated by his behavior and his
16 history a willingness to get on whatever Lavalife is to use the
17 Internet to entice people, that he has the characteristic
18 described by Ms. Bottomly of being able to be -- a profile that
19 suggests a natural ability to charm, persuade or even con
20 others, coupled with numerous misanthropic attitudes. It's, I
21 think, solidly reflected in the record there's a need to protect
22 the public from further crimes by Mr. Nielsen that are sexually
23 or violently expressed.

24 There is a need to provide him with educational,
25 vocational, medical and other correctional treatment in the most

1 effective manner. He has completed the RDAP program, which is
2 to his benefit. And I think Mr. Donahoe indicated that --
3 correctly so, that given the length of the sentence his
4 decision-making about participating in sex offender treatment
5 program is something that, given the fact that he is going to be
6 doing 480 months in prison, probably more effective when he gets
7 closer to the point where he would be released from prison. He
8 does need significant treatment in my view, although
9 Dr. Scolatti indicated he did not believe that was going to be
10 very effective.

11 I have stated the kinds of sentences that are available and
12 I have also given notice that I intended to make an upward
13 variation in this case. I have given Ms. Peterson the
14 opportunity, if she needed it, to have more time to address that
15 issue, and likewise have given Mr. Donahoe an opportunity, if he
16 wanted to address that issue, to have more time before the
17 imposition of sentence. I think both counsel have indicated
18 that they are satisfied with the record. And I know Mr. Donahoe
19 probably will question my judgment, but -- or the reasonableness
20 of the 480 month sentence, but I have given advance notice of
21 the intent to vary based upon on the information in Dr.
22 Scolatti's and the presentence report -- Dr. Scolatti's report
23 and the presentence report.

24 The guideline range is 188 to 235 months. And do not
25 believe that that is sufficient. I think it's inadequate. It

1 does not meet the characteristics. I think the Congress
2 intends, in reflecting on what is sufficient, but not greater
3 than necessary sentence would be, for the reasons I have stated.
4 There are no policy statements that I have found that I think
5 would have any bearing. And there is a need to avoid
6 unwarranted sentence disparities among defendants with similar
7 records who have been found guilty of similar conduct.

8 In my 17 years, almost, on the bench, I don't recall any
9 other person, save one, that I have imposed a sentence of the
10 magnitude for a sex offense that I am imposing on Mr. Nielsen.
11 That person, I believe, is also sentenced to 480 months or
12 something close to that. But like Mr. Nielsen, that person had
13 a sexual background and sexual evaluations that indicated, in my
14 judgment, a risk of serious sexual offenses in the future based
15 upon sexual behavior in the past and the psychological
16 evaluations and sex offender evaluations that had been -- that
17 had taken place.

18 There is a need to provide restitution here. And the
19 amount of \$2,305 is the appropriate amount. And as Ms. Peterson
20 indicated and Mr. Donahoe indicated, he had received notice,
21 that is for the expenses of the parents in trying to locate
22 their child, as the mother said -- or as the father said, My
23 baby, when she had left Wyoming to engage in a horrific week of
24 abuse by William Richard Nielsen.

25 Mr. Donahoe, I'm prepared to impose sentence. If you and

1 Mr. Nielsen would approach the lectern.

2 MR. DONAHOE: (Complies.)

3 THE COURT: William Richard Nielsen, pursuant to the
4 authority vested in me by the Constitution of the United States
5 and the laws enacted by the Congress, as they have been
6 interpreted by the Supreme Court of the United States and the
7 Ninth Circuit Court of Appeals, I have considered your case in
8 great depth. And I have carefully considered the reasoning set
9 forth in Judge Tashima's opinion in the case where you prevailed
10 on appeal because of my misguided application of the guidelines.
11 And I have read that over several times trying to make sure that
12 I am complying with what the circuit indicated the law was in
13 your case. I have considered the reports of Dr. Scolatti,
14 everything that's in the presentence investigation report, all
15 of the material that had been previously submitted in this case.
16 And I have considered all of the factors of 18 U.S. Code
17 3553(a), as well as the sentencing guidelines. And it is not
18 something that I do cavalierly, but I do believe for the reasons
19 I have stated in considering what I am supposed to consider
20 under the law. And it is my judgment that you, William Richard
21 Nielsen, be committed to the custody of the Bureau of Prisons
22 for 480 months. This is an upward variation from the advisory
23 guidelines. I believe it is justified for the reasons I have
24 stated on the record.

25 I'm going to recommend that you be allowed to participate

1 in the sex offender treatment program if you go back to Tucson
2 or at any other facility you happen to reside in if you are
3 eligible. And in the fact that you have successfully completed
4 a 500-hour residential drug treatment program, I will not
5 recommend that again. I think they will only let you do that
6 once.

7 Mr. Nielsen, when you are released from prison you are
8 going to be placed on supervised release for the balance of your
9 life. Within 72 hours of your release from the Bureau of
10 Prisons you report in person to the probation office in the
11 district to which you are released.

12 While you are on supervised release you're not to commit
13 another federal, state or local offense. You shall not possess
14 any kind of controlled substance, and that includes so-called
15 medical marijuana, or any of the synthetic controlled
16 substances -- or synthetic substances that allow you to alter
17 your physical or mental state.

18 You are prohibited from owning, using or being in
19 constructive possession of firearms, ammunition or other
20 destructive or dangerous devices. And that is for the balance
21 of your life. If you have those things, you are committing
22 another federal offense. You could be indicted and if
23 convicted, sentenced on those counts.

24 You're not to use controlled substances and you're going to
25 have to cooperate in the collection of DNA as directed by the

1 probation office.

2 While you're on supervised release you're going to have to
3 comply with the 15 standards -- conditions of supervised release
4 that have been adopted by the Court and recommended by the
5 United States sentencing guideline commission. You need to read
6 those and understand them. They will be enforced.

7 You will have to also comply with the following special
8 conditions. You are going to have to, even in light of your
9 completion of the 500-hour residential drug treatment program,
10 you're going to have to complete a program of substance abuse
11 treatment as approved by the probation office and continue in
12 that treatment until you are relieved of the obligation by the
13 probation office. You will have to pay for the treatment in
14 whole or part, depending upon your ability to pay.

15 You're going to have to participate in substance abuse
16 testing, and that will include not more than 104 urinalysis
17 tests, not more than 104 breathalyzer tests annually during the
18 period of your supervised release. You will have to pay for
19 that in whole or part of the testing, depending upon your
20 ability to pay as determined by the probation office.

21 Mr. Nielsen, I am going to require that you abide by
22 standard condition number 7, with respect to the consumption of
23 alcohol. And what means is that you are not to drink alcohol in
24 excess. Excess is defined as a blood alcohol of point -- I
25 think it's point 006, if I'm correct. It's either point 06 or

1 point 006.

2 You're going to have to participate in a program for mental
3 health treatment and continue in that program for assessments
4 for anger control. And you will stay in that program until the
5 probation office releases you from that obligation. You will
6 have to pay for that treatment in whole or part, depending on
7 your ability to pay.

8 I am going to require, even if you complete the sex
9 offender treatment program in prison, that you enter and
10 complete a sex offender treatment program as directed by the
11 U.S. probation officer in charge of your case and that you
12 continue in that program until you're relieved of the obligation
13 not only by the sex offender counselor, but also by the United
14 States probation officer in charge of your case. You will have
15 to abide by the policies of the program, and that will include
16 physiological testing, polygraph and Able Assessment. You will
17 have to pay for the treatment in whole or part, depending upon
18 your ability to pay.

19 Mr. Nielsen, you're going to have to consent to have all
20 employment be approved in advance in writing by the probation
21 office. And you're going to have to consent to the third party
22 disclosure to any employer or potential employer of the reasons
23 you are here.

24 You're not going to be allowed to do any of the following
25 unless you have the prior written approval of the U.S.

1 probation office. Now, this doesn't bar you from that. It
2 simply means if you intend to participate or engage in any of
3 the following, before you do so you must first obtain the
4 written permission of your supervising probation office. So
5 without that, you are not to reside in the home, residence or be
6 in the company of any child under the age of 18, with the
7 exception of your own children if you have them. You're not to
8 go to or loiter near schoolyards, parks, playground, arcades or
9 other places primarily used by children under the age of 18.
10 You're not to date or socialize with anybody knowing they have
11 children under the age of 18, as I have indicated, without the
12 prior written approval of the U.S. Probation Office.

13 Mr. Nielsen, you are not to possess or view any materials
14 depicting sexually explicit conduct as defined in 18 U.S. Code
15 2256(2)(A) Roman one through five, including visual, auditory,
16 telephonic or electronic media, computer programs or services.
17 You are not to patronize any place where such material or
18 entertainment is the primary item of sale. And you're not to
19 utilize 900 or adult telephone numbers or any other sex-related
20 numbers.

21 Now, based upon your use of computers and digital devices
22 to entice this 12 year old, and you also used computers or the
23 Internet and Lavalife in conjunction with the woman who acted as
24 a sex slave, you are not to possess or use any computer or other
25 device with access to any online computer service without the

1 prior written approval of your probation office. It doesn't bar
2 you, but before you use a computer or any of those other devices
3 you have to have written approval.

4 You've got to allow the probation office to make
5 unannounced examinations of your computer, hardware and
6 software. And that may include the retrieval and copying of all
7 data from your computer. Again, the facts that justify this are
8 set forth in the presentence report, the manner in which you
9 contacted the victim here and others. And the fact that you
10 actually used the Internet to obtain some contract for sex
11 slaves.

12 You're going to have to allow the probation officer to
13 install software to restrict your computer access or to monitor
14 your computer access. And you're not to possess any encryption
15 or steganography software. You're going to have to provide all
16 passwords, Internet service and user identifications past and
17 present to the probation officer in charge of your case. And
18 you will have to immediately report any changes. You will have
19 to sign releases that allow the probation office to access
20 phone, wireless, Internet and utility records.

21 You will have to comply with the sex offender registration
22 requirements for convicted offenders in any state in which you
23 live or reside. You're going to have to submit your person and
24 any property, residence, place of employment, vehicle, papers,
25 computers as defined in 18 U.S. Code 1030(e)(1). Other

1 electronic communications or data storage devices or media are
2 subject to search with or without a warrant, with or without
3 probable cause and with or without reasonable suspicion by any
4 law enforcement or probation officer in the lawful discharge of
5 the officer's supervisory functions. This is justified, in my
6 view, based upon your use of the Internet for criminal behavior.
7 And this condition may include location monitoring and tracking
8 of any vehicle that you use or have access to. You will have to
9 warn anybody living with you that the place you're living in is
10 subject to searches without reasonable suspicion pursuant to
11 this condition. You're going to have to allow seizure of
12 suspected contraband for further examination.

13 You're not to possess any police radio scanning devices or
14 computer hardware or software that will enable you to track or
15 monitor law enforcement activities. That includes applications
16 for digital devices or cell phones.

17 You're not to purchase, use, possess distribute or
18 administer marijuana or obtain or possess a medical marijuana
19 card or prescription. This condition supercedes standard
20 condition number 7 with respect to marijuana only. As I
21 mentioned earlier you're not to ingest or inhale any toxic
22 substances such as, but not limited to, synthetic marijuana
23 and/or synthetic stimulants, things like bath salts or Wet or
24 Spice. You're not to ingest anything that is not manufactured
25 for human consumption with the purpose of altering your physical

1 or mental state.

2 You are going to be required to pay restitution in the
3 amount of \$2,305 at a rate of not less than 10 percent of your
4 gross monthly income, unless otherwise directed by the probation
5 office based on your financial condition. And restitution will
6 be made in accordance with the names set forth in the record.
7 But you will have to make the payment to the Clerk of the U.S.
8 District Court, P.O. Box 8537, Missoula, 59807. It will be
9 disbursed to the mother and father of the child in the case with
10 their addresses as is set forth in the materials available to
11 the clerk.

12 I find you don't have the ability to pay a fine, so I'm not
13 going to impose one. I might say that with respect to the
14 restitution, have you paid the \$100 special assessment?

15 THE DEFENDANT: I have been paying it as much as I could
16 through the job I had in Tucson.

17 THE COURT: Well, once that's paid off, then you will
18 continue to pay at a rate not less than \$25 per quarter on the
19 restitution that is ordered until that restitution is paid. I'm
20 going to waive interest on the restitution pursuant to statutory
21 law.

22 So you will pay the \$100 until it's paid off and do that
23 through the Inmate Financial Responsibility Act at a rate not
24 less than \$25 per quarter.

25 Ms. Peterson, is there any legal reason why that sentence

1 as stated should not be the judgment of the Court?

2 MS. PETERSON: No, Your Honor.

3 THE COURT: Okay. Well, I think there was a waiver of
4 appeal, but I think it was contingent, wasn't it?

5 MS. PETERSON: That's correct.

6 THE COURT: So he does have the right to appeal.

7 MS. PETERSON: That's correct.

8 THE COURT: Mr. Donahoe, any legal reason why the sentence
9 shouldn't be as stated by the Court?

10 MR. DONAHOE: Your Honor, we do object to the sentence
11 based on all the records and papers in the case. Further we
12 respectfully submit that the sentence is unreasonable.

13 THE COURT: All right. Your objection is noted, but the
14 sentence as stated will be the judgment of the Court.

15 Now, William Richard Nielsen, you do have a right to appeal
16 the imposition of the sentence that I just imposed. If you
17 intend to appeal, you must file a written notice of appeal
18 within 14 days of today's date. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The notice of appeal has to be in writing, and
21 it has to be filed with the Clerk of the United States District
22 Court for the District of Montana. And if you don't file the
23 notice in writing within the next 14 days with the Clerk of the
24 U.S. District Court, then you will have waived your right to
25 appeal. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have a right to ask the Court to direct the
3 Clerk to enter a notice of appeal on your behalf or you can rely
4 on Mr. Donahoe to file the notice to appeal on your behalf. Do
5 you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you want the Court to direct the Clerk to
8 enter a notice of appeal on your behalf or do you want to rely
9 on Mr. Donahoe?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. That's yes to which? Are you going to
12 rely on Mr. Donahoe?

13 THE DEFENDANT: Rely on Mr. Donahoe.

14 THE COURT: All right. I will not direct the Clerk to
15 enter a notice of appeal. Well, I'm going to remand you to the
16 custody of the United States Marshals to carry out the judgment
17 of the Court. We will be in recess.

18 (End of proceedings.)
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25

C E R T I F I C A T E

STATE OF MONTANA)
 : SS
County of Missoula)

I, Jennifer Wells, Freelance Court Reporter for the State of Montana, residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in this cause.

I further certify that the foregoing pages of this transcript represent a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 17th day of December, 2012.



Jennifer Wells
Freelance Court Reporter
State of Montana,
Residing in Missoula, Montana